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Mailed: 6/15/05
In re application of
Henrick Hansen, et al.
Serial No. 10/087,014
Filed: March 1, 2002
For: COATING A MEDICAL IMPLANT USING A PAN COATER

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DECISION ON
PETITION

This is a decision on the PETITION UNDER 37 CFR 1.182 filed August 31, 2004 requesting entry of a claim erroneously withdrawn by the July 14, 2004 final Office action. The petition has been accepted as a request under 37 CFR 1.181 and will be decided by the Director of Technology 1700.

The first Office action, mailed on November 24, 2003 included an election between group I, encompassing claims 1-19 and 25-28 and group II, claims 20-24. Applicant on February 19, 2004 elected group I without traverse and added claim 29. Claim 29 is a method claim dependent from claim 1.

In the final Office Action of May 3, 2004, the examiner did not include claim 29. The examiner in a supplemental final action on July 14, 2004 included claim 29 and made a new restriction requirement based on claim 29 and since applicant received an action on the merits for the originally presented invention, claim 29 was withdrawn from consideration as being directed to a non-elected invention.

The examiner's basis for the restriction of claim 29 was that claim 29 was directed to an invention that is independent or distinct from the invention originally claimed namely that the immersion species is distinct from the spraying species previously examined.

Applicants originally elected claims were drawn to a spraying a therapeutic agent into a rotating drum to coat the medical devices and tumbling devices into a vat of therapeutic agent. The examiner asserts that spraying and immersion are distinct species of the claimed invention

Applicant asserts that claim 29 is within the scope of the species defined and elected by the applicant and that the subject matter of claim 29 falls within the same class and sub-class of search identified by the first Office action. A review of facts shows that applicant's request has merit.

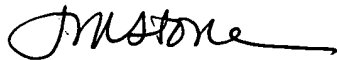
DECISION

Claim 29 depends from a member of group I and is within the scope of the species defined in the first Office action and elected by the applicant, which is a method of coating.

This Petition is **GRANTED**.

Since applicant's filing of the petition on August 31, 2004, a request for continued examination was filed and a final rejection mailed on April 18, 2005.

The application will be forwarded to the Examiner for the examination of claim 29. The finality of the previous office action will be withdrawn and new action issued incorporating claim 29.



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